

SERVICE DATE – JULY 13, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1095 (Sub-No. 2X)

SMS RAIL SERVICE, INC.—ABANDONMENT EXEMPTION—IN GLOUCESTER
COUNTY, N.J.

Digest:¹ The Board waives, for purposes of this case, the application of two regulatory requirements that the carrier, which is seeking to abandon a line through the notice of exemption process, would otherwise have to meet.

Decided: July 12, 2017

On May 25, 2017, SMS Rail Service, Inc. (SMS), filed a verified notice of exemption under 49 C.F.R. § 1152.50 for SMS to abandon approximately 5.8 miles of railroad line (the Line) within the 970-acre refinery owned by Paulsboro Refining Company, LLC (PRC), in Paulsboro, N.J. The Line is the same line as to which the Board granted PRC's application for adverse abandonment against SMS in December 2014. See Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cty., N.J., AB 1095 (Sub-No. 1) (STB served Dec. 2, 2014). That decision later was vacated at the parties' joint request due to settlement. Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cty., N.J., AB 1095 (Sub-No. 1) (STB served June 19, 2015).

To qualify for the two-year out-of-service class exemption, a carrier must certify, among other things, that “no local traffic has moved over the line for at least 2 years,” 49 C.F.R. § 1152.50(b). Here, SMS certifies that “no rail traffic has been transported by SMS over [the Line] . . . for at least two years.” (Notice, App. 1 at 1 (emphasis added).) In light of the unique circumstances of this case (including, among other things, the recent adverse abandonment proceeding pertaining to the Line), to the extent, if any, that SMS's certification could be deemed not to meet the requirement of § 1152.50(b), that regulation is waived as applied here.

SMS states that it does not need to prepare an environmental and historic report because there will be no salvage of the Line and no diversion of traffic from rail to truck. (Notice 5.) Environmental and historic reports are generally required in all abandonment proceedings. See 49 C.F.R. § 1105.6(b)(ii). Here, however, both environmental and historic reports were prepared and submitted to the Board as part of PRC's adverse abandonment application for the Line in

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Docket No. AB 1095 (Sub-No. 1). In that case, PRC submitted a combined environmental and historic report with its adverse abandonment application and notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. § 1105.11. The Board's Office of Environmental Analysis (OEA) issued an Environmental Assessment (EA) on February 12, 2014, concluding that the proposed abandonment would not significantly impact the quality of the human environment and recommending no environmental mitigation conditions. Following the public comment period, OEA issued a final EA.² No environmental mitigation conditions were recommended by OEA based on comments received during the comment period. In its decision granting PRC's adverse abandonment application, the Board adopted OEA's analysis and found that the proposed abandonment, if implemented, would not significantly affect the quality of the human environment and that no environmental conditions were needed. See Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cty., N.J., AB 1095 (Sub-No. 1), slip op. at 6 (STB served Dec. 2, 2014).

The Board finds that the environmental review conducted in Docket No. AB 1095 (Sub-No. 1), which pertained to the Line, satisfies the agency's obligations under the National Environmental Policy Act, 42 U.S.C. § 4321 and the National Historic Preservation Act, 54 U.S.C. § 300101 et seq. in this case. The Board therefore will waive the environmental and historic reporting requirements under 49 C.F.R. §§ 1105.7 and 1105.8.

Because the Board is aware that ExxonMobil Corporation was once a customer of SMS on the Line,³ SMS will be directed to serve this decision on ExxonMobil within five days and certify to the Board that it has done so.⁴

It is ordered:

1. Notice of the exemption will be served and published in the Federal Register by separate order. The effective date of the exemption will be established in that notice.
2. The certification requirement of 49 C.F.R. § 1152.50(b) is waived to the extent discussed above.
3. The environmental and historic reporting requirements under 49 C.F.R. §§ 1105.7 and 1105.8 are waived.

² The Final EA may be found on the Board's website at: [https://www.stb.gov/Ect1/ecorrespondence.nsf/PublicOutgoingByDocketNumber/59C20FCF643A358385257C980053C269/\\$File/EO-2237.pdf?OpenElement](https://www.stb.gov/Ect1/ecorrespondence.nsf/PublicOutgoingByDocketNumber/59C20FCF643A358385257C980053C269/$File/EO-2237.pdf?OpenElement).

³ See Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cty., N.J., AB 1095 (Sub-No. 1), slip op. at 1 (STB served Dec. 2, 2014).

⁴ This decision does not affect the ability of ExxonMobil or any other interested person to file a petition to stay and/or a petition to reconsider the notice of exemption pursuant to 49 C.F.R. § 1152.50(d)(3).

4. SMS shall serve a copy of this decision on ExxonMobil Corporation within five days of the service date of this decision and contemporaneously certify to the Board that it has done so.

5. This decision is effective on its date of service.

By the Board, Board Members Begeman, Elliott, and Miller.